IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 23096 of 2004

Between:

Toddy Co-operative society, Velgonda Village, Veepanagandla Mandal, Mahboobnagar, District, rep.by its President Sri M.Raman Goud, S/o.Sayanna Goud.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Revenue (Ex.II) Department, rep.by its Special Chief Secretary to Government
Secretariat Building, Secretariat, Hyderabad.
2 The Commissioner of Proh.&Excise, Government of A.P., J.N.Road, Opp.Exhibition Grounds, Nampally, Hyderabad.
3 The Superintendent of proh. & Excise, Mahboobnagar District at Mahboobnagar.
4 The Inspector of Proh & Excise (SHO), Kollapur circle, Kollapur Vill & Mandal, Mahboobnagar Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of writ of Mandamus directing the 3rd respondent either to revive the existing licence bearing No.8 issued on 25-4-2002 vaild from 25-4-2002 to 31-3-2007 or issue a new licence in pursuance of G.O.Ms.No.998 Revenue (Excise-II) Department, dated 1-10-2003, para 4 (b)(ii), to the petitioner society in respect of Velgonda Village, Veepannagandla, Mandal, Mahaboobnagar District, declaring the impugned proceedings R.C.No.B3/1333/04 dated 2-11-2004, as illegal, and pass such other order or orders.

Counsel for the Petitioner: MR.B.SAI RAM GOUD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

ORAL ORDER

Heard Sri B.Sai Ram Goud, the learned counsel for the petitioner and the learned Government Pleader for Excise for the respondents.

The petitioner is aggrieved by the order of the 3rd respondent dated 02-11-2004 rejecting the request for revival of the licence of its toddy shop at Velgonda.

The Toddy Cooperative Society, Velgonda, Veepanagandla Mandal, Mahboobnagar District was issued a licence on 25-02-2002 valid up to 31-03-2007 enabling toddy business. On 18-10-2002 a criminal case was registered against the society alleging adulteration of the vended toddy. On 22-10-2002 the licence of the society was suspended and the licence was cancelled on a conclusion that the society had indulged in adulteration of the toddy.

After cancellation of the licence of the society, the members of the society, who claim to have been unconnected with the adulteration of the toddy removed the President of the society, Sri M.Gunda Swamy and other members who allegedly were involved in the adulteration of the toddy, reconstituted the management and made an application dated 21-05-2004 to the 3rd respondent requesting issuance of a new licence to the society in terms of Excise Policy issued in G.O.Ms.No.998, dated 01-10-2003 which constituted the toddy policy in operation for the period 01-10-2003 to 30-09-2004. This application was disposed of by the order impugned in this writ petition. The 3rd respondent applied the toddy policy for the current year i.e., the one applicable for the period 1-10-2004 to 30-09-2004, issued in G.O.Ms.No.767, Revenue Department, dated 29-09-2004, for rejecting the application of the petitioner for

grant of licence for the Toddy Cooperative Society.

In G.O.Ms.No.998 which constituted the Excise (Toddy Policy guidelines) for the period 01-10-2003 to 30-09-2004, in Paragraph No.4(b) of the annexure to the said G.O, wherever any Toddy Tappers Cooperative Society is found guilty of indulging in adulteration and its licence cancelled, the society, in case it is located in a Municipality or a Municipal Corporation, may apply for a fresh excise licence after removing the entire Managing Committee members from the primary membership of the society. This policy was substituted by a new policy for the current year i.e., 01-10-2003 to 30-09-2004, by the policy issued in G.O.Ms.No.767 dated 29-09-2004. As per paragraph No.7(b) of the Excise(Toddy Policy Guidelines), issued in G.O.Ms.No.767 wherever any Toddy Tappers Cooperative Society is found guilty of indulging in adulteration and its licence has been cancelled after following due procedure, in case there are any eligible tappers in such location, after the cancellation of the licence to the Toddy Cooperative Society, a Tree for Tappers Licence may be granted.

Though the application by the petitioner-society for revival of its licence was made on 21-05-2004 during the currency of the Excise (Toddy) policy as issued in G.O.Ms.No.998, dated 01-10-2003, the said application came to be disposed of by the impugned order dated 02-11-2004, during the currency of the current Excise (Toddy) Policy Guidelines issued in G.O.Ms.No.767, dated 29-09-2004. As per the current legal dispensation, wherever the licence of a Toddy Cooperative Society is cancelled, after following due procedure, for any misconduct in its functioning, in particular for indulging in adulteration, no licence could impliedly be granted to the Toddy Cooperative Society. Individual members of such society could be considered for grant of Tree for Tappers Licence.

The constitutional and legal position is fairly well settled. There is no fundamental right to pursue business in alcoholic beverages. Admittedly vending toddy is indulging in a business in alcoholic beverages. The State is, however, granted a plenitudenous privilege to regulate the business of liquor, in public interest. In exercise of such extensive privilege, the State issues Excise Policy Guidelines year after year. The current guidelines issued in G.O.Ms.No.767 dated 29-09-2004 explicate the governmental policy that wherever the licence of a Toddy Cooperative Society is cancelled for indulging

in adulteration, the licence ought not to be renewed, but, individual members could be considered for grant of a licence under the Tree for Tappers Scheme. Such policy decision is a choice legitimately inhering the State. The petitioner does not assail the legitimacy of the State in making such policy choices in the matter of the inherently pejorative trade in alcohol beverages. The essential position underlying the petitioner's claim is that as he had made the application for renewal of the licence for the Toddy Cooperative Society during the currency of the previous Excise Policy Guidelines, his application should be considered under those guidelines and not the current guidelines. This contention does not commend acceptance by this Court. The Excise Policy is a law, which governs the discretion of the authorities under the Excise Act. They are bound to implement the law that is in existence as on the date a decision is taken. As on the date of the impugned order dated 02-11-2004, it is the Excise Guidelines-cum-Policy issued in G.O.Ms.No.767 dated 29-09-2004 that was in existence and in operation and, therefore the 3rd respondent was obligated and legally bound to implement the policy as contained in G.O.Ms.No.767.

On the above analysis, the order of the 3rd respondent impugned in the writ petition suffers from no infirmity warranting interference by this Court. The writ petition beseeches rejection and is accordingly dismissed.

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GODA RAGHURAM,J

2ND FEBRUARY 2005

*TSNR

TO

1. The Special Chief Secretary to Government, Secretariat Buildings, Secretariat, Hyderabad.

2 The Commissioner of Proh.&Excise, Government of A.P., J.N.Road, Opp.Exhibition Grounds, Nampally, Hyderabad.

3 The Superintendent of proh. & Excise, Mahboobnagar District at Mahboobnagar.

4 The Inspector of Proh & Excise (SHO), Kollapur circle, Kollapur Vill & Mandal, Mahboobnagar Dist.

5. Two CCs to GP for Excise, High Court Buildings, High Court of A.P. Hyderabad.(OUT)

6. Two C.D.Ciopies.

*Form-NIC-OGS/WP{**JA**}*